IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated: 16/04/2003

CORAM

THE HON'BLE MR. JUSTICE A.K. RAJAN

S.A.No.1742 of 1992

Arulmighu Kumbeswarar Koil,
Kurinjipadi, by

1. P.K.Annamalai (as trustee
and worshipper),
S/o Kumarasamy Mudaliar,
33, Easwaran Koil Street,
Kurinjipadi, Cuddalore Taluk.

2. Palaniandi Mudaliar,
S/o Adhanamozhi Mudaliar,
No.57, Vachani Mudali Street,
Kurinjipadi, Cuddalore Taluk.

3. M.Govindasamy Mudaliar,
S/o Mannarsamy Mudaliar,
43, Vachani Mudaliar Street,
Kurinjipadi, Cuddalore Taluk. .. Appellants

-Vs-

1. The Commissioner,
H.R. & C.E. Department,
Nungambakkam High Road,Madras.

2. The Deputy Commissioner,
H.R. & C.E. Department,
Mayiladuthurai,
Thanjavur District.

3. The Assistant Commissioner,
H.R. & C.E. Department,
Kammiampettai,
Thiruppapuliyur,
Cuddalore-2.

4. S.Natarajan,
S/o Sambandamurthi Asari,
Kammiampettai,
Thiruppapuliyur,

Cuddalore-2. .. Respondents

Appeal filed against the judgment and decree dated 9.1.1991 passed in A.S.No.239 of 1989 by the District Judge, South Arcot.

!For Appellant : Mrs. Hema Sampath

^For Respondents : Mr.S. Sathiamurthy,
Government Advocate for R.1 to R.3.

No appearance for respondent No.4

:J U D G M E N T

The Second Appeal has been filed by the plaintiff in the suit. 2. The suit has been filed by the Trustees as well as Worshippers of Arulmighu Kumbeswarar Koil, Kurinjipadi, in a representative capacity; representing Senguntha Mudaliar community of Eswaran Koil Street, Vachani Mudali Street and Ellaikal Street in Kurinjipadi. 3. The case of the plaintiff is as follows: a) Arulmighu Kumbeswarar Temple at Kurinjipadi Old Street belongs to Senguntha Mudaliar community. It was built about 150 years ago. People of Senguntha Mudaliar community of the Old Street are managing the temple. Only in case of emergency, some others were managing the temple. This temple was built only for the benefit of their community. Many people of that community settled property in the name of the temple for the advancement of the people of that community. Though public are also worshipping in the temple, it is not a matter of right. The trustees were selected only from the community of the three streets. No other person other than Senguntha Mudaliar community was ever appointed as trustees. b) Earlier, a suit was filed by the Reddiar community in O.S.No.28 of 1914, against Senguntha Mudaliar community. By a judgment and decree dated 29.9.1917, a scheme was framed by the Court wherein it was declared that the temple is a public temple; the properties of the temple are under the control of Senguntha Mudaliars of Old Street, Kurinjipadi. After the temple came under the supervision of H.R. & C.E., the Board has also recognized the right of Senguntha Mudaliars and trustees were appointed only from and out of the Senguntha Mudaliar community people of the said three streets. The Board has only a limited right in the matter of appointment of trustees. The supervision of the Board extends only to the auditing of the accounts. Senguntha Mudaliar community has also prescribed the right of becoming trustees of the temple. In the year 1979, the first plaintiff P.K. Annamalai was appointed as the trustee for three years by H.R.& C.E. Board. It was extended on 5.7.1982 for another three years. When a portion of the land of the temple was acquired, the compensation amount was directed to be given to Arulmighu Muthumariamman temple, Kurinjipadi by the H.R. & C.E. Board. Therefore, a suit in O.S.No.442 of 1986 was filed before Cuddalore D.M.C. against H.R. & C.E., as well as Muthumariamman temple for a declaration that the plaintiff is entitled to get the amount; that suit is still pending. Aggrieved by this act of the Trustee of the temple, the H.R. & C.E. Board by order dated 12.6.1987 appointed one Rajamani as trustee.

Though he belonged to Senguntha Mudaliar community of one of the three streets mentioned above, as he is a defaulter in payment of lease amount, his appointment is illegal. Therefore, as per Section 26-C of the H.R. & C.E. Act, the said Rajamani becomes disqualified to be ap pointed as the trustee. Therefore, a suit was filed in O.S.No.887 of 1987 for permanent injunction and temporary injunction was granted on 6.11.1987. Thereafter, on 10.11.1987, a meeting was convened by the people of the community and it decided that the first trustee of the temple, P.K.Annamalai shall be appointed as the trustee and a resolution was passed to that effect. But the H.R. & C.E. Board did not accept this. Therefore, H.R. & C.E. Board appointed fourth defendant who is not a member of the Senguntha Mudaliar community as Thakkar or fit person. The order passed by the H.R. & C.E. appointing fourth defendant as Thakkar is not valid. The Board wanted to deviate from the convention; the valuable right accrued to the community cannot be taken away. The fourth defendant approached the High Court for relief, but the High Court directed him to approach the appropriate civil Court. c) The plaintiffs pray for (1) a declaration that Arulmighu Kumbeswarar Temple is the denominational temple belonging to Senguntha Mudaliar community people of the three streets; (2) for a declaration that Senguntha Mudaliar community people of the three streets alone are entitled to be appointed as trustees; (3) for a declaration that the appointment of the fourth defendant as the fit person of the temple as null and void; and (4) to injunct the defendants or their men from in any manner interfering with the management of the affairs of the Arulmighu Kumbeswarar temple by the first trustee. 4. In the written statement filed by the defendants, it is stated as follows: The suit as filed in the representative capacity is not maintainable. The Board appointed one Rajamani, non-hereditary trustee, after P.K. Annamalai completed the period as trustee. But he did not take charge. Subsequently, he resigned. Therefore, P.K.Annamalai is continuing as non-hereditary trustee. Since the Board is unable to appoint trustees in time, temporarily it appointed third defendant as Thakkar as per Section 49 of the H.R. & C.E. Act. The said P.K.Annamalai was appointed twice as trustee of the temple. Only in order to prevent the management of the temple by the Thakkar, P.K. Annamalai has filed the suit. It is not correct to say that the temple belongs to Senguntha Mudaliar community of the three streets. There was no such plea raised in the earlier suit. The Board has got a right to control and supervise the administration of the temple and also appoint non-hereditary trustees to the temple. Therefore, the suit as framed is not maintainable. 5. On these pleas, issues were framed and on the basis of evidence adduced, the trial Court, (i) granted a declaration that the suit temple is a " denominational" temple; (ii) found that Senguntha Mudaliar community of the three streets alone have the right to be appointed as trustees; (iii) held that the appointment of Thakkar was valid; and (iv) rejected the plead for injunction. 6. Aggrieved by the judgment, an appeal was filed by the plaintiff. The first Appellate Court set aside the finding of the trial Court with respect to the appointment of Thakkar. The first Appellate Court declared that the appointment of the fourth defendant as Thakkar is invalid. But, it confirmed the finding of the trial Court with respect to plea of injunction. The first Appellate court held that the plaintiff is not entitled for the injunction restraining H.R. & C.E. Board from interfering with the management of the temple by the first defendant.

7. Against the judgment and decree of the first Appellate Court, the plaintiff has preferred the Second Appeal. The Second Appeal was admitted on the following substantial questions of law. (1) Whether the lower Appellate Court having held that the temple is a denominational one belonged to a particular community is right in rejecting the relief of injunction when the Commissioner constituted under the H.R. & C.E. Act 1959 has no right to interfere with the management of temple by appointing trustees of its choice? (2) Whether in law the Courts below are right in overlooking the fact that the dispute raised in the suit relates to the administration or management of a denominational temple and as such the bar under Section 108 of Act XX of 1959 will not apply? 8. Tmt. Hema Sampath, the learned counsel for the appellant contended that the trial court has granted a declaration that the suit temple is a denominational temple and since the respondents did not prefer any appeal, that issue reached finality; the trial Court though declared the temple as a denominational temple, yet held that the appointment of the fourth respondent as fit person was legal and valid; that was set aside by the first Appellate court. Since no appeal was filed by the respondents against that finding that issue also reached finality. Learned counsel for the appellant further submitted that having held that the temple is a denominational temple, the Courts should have granted the injunction, as prayed for, since H.R. & C.E. Board has no power whatsoever to regulate the affairs of any denominational temple; it can only supervise, in accordance with law. In short, the contention of the learned counsel is that with respect to denominational temple, H.R. & C.E. has no authority to appoint the trustee or to pass any direction as to how a person has to be recommended by the members of the denomination for appointment as the trustee of the temple; the Board has no control in such matters; the only right of the Board is to appoint the persons recommended by the members of the denomination as trustees.

9. In support of her contention, the learned counsel relied upon the decision of the Supreme Court in COMMISSIONER, H.R.& E. v. L.T. SWAMIAR (A.I.R. 1954 S.C. 282 and also upon the following decisions:

1) KRISHNA CHETTIAR v. RAMAN CHETTIAR (1962 (I) M.L.J. 385 2) DEPUTY COMMISSIONER, H.R. & C.E. BOARD v. SIDHDHIVINAYAGA MUDALIAR (1971 (1) M.L.J. 422 3) CHINA BOYAN v. COMMISSIONER FOR H.R. & C.E. (1975 (II)) M.L.J. 29 4 4) SUBRAMANIA PILLAI v. TRUSTEES, TEMPLE GROUP (1981 (ii) M.L.J. 77(D.B) 5) SRI KANYAKA PARAMESWARI ANNA SATRAM COMMITTEE v. COMMR., HINDU RELIGIOUS & CHARITABLE ENDOWMENTS DEPARTMENT ((1999) 7 SUPREME COURT CASES 666.

10. In Kanyaka Parameswari case, H.R.& C.E. Board appointed a person as the Executive Officer of a temple; that temple was declared as denominational temple. But the challenge to the appointment of the Executive Officer and the injunction prayed for was rejected. A Single Judge of the Andhra Pradesh High Court held that the power of the functionaries under the Act to suspend a trustee and appoint a fit person under Section 26 or to appoint an executive officer under Section 2 7 should be read down to mean that the power so exercised should not amount to total extinction or destruction altogether of the right of the religious denomination to

administer the property and vest it in any other authority; and therefore, the claim i n the suit that the provisions of the Act are not applicable to the institution and that the Board has no jurisdiction to appoint an executive officer was rejected and hence the prayer was dismissed. On appeal, the Division Bench agreed with the conclusion that the institution is a denominational institution, but it was of the view that the appointment of the Executive Officer was for the better management of the institution and if a person from the same community is appointed as an Executive Officer, there cannot be any prejudice to the appellant. When the matter was taken to Supreme Court, the Supreme court has observed as follows: " It cannot be denied that among the religious institutions denominational institutions stand on a different footing and enjoy special protection under Article 26 of the Constitution. Therefore, while considering the challenge to the appointment of an executive officer, it is essential to bear in mind the protection given under Article 26 of the Constitution, which the High Court failed to do. While accepting the finding, which has not been challenged by the respondents that the appellant institution is a denominational one, the High Court will decide the legality of the appointment of the executive officer particularly in the light of Article 26 of the Constitution and the earlier decisions of the Supreme court. " and remanded the case. (b) The case in SUBRAMANIA PILLAI v. TRUSTEES, TEMPLE GROUP (1981 (ii) M.L.J. 77(D.B) is a decision with respect to appointment of hereditary trustees. (c) In CHINA BOYAN v. COMMISSIONER FOR H.R. & C.E. (1975 (II) M.L.J. 294, this Court has held that,

" A law which takes away the right of administration from the hands of the religious denomination altogether and vests it in any other authority would amount to a violation of the right guaranteed under Article 26. "

(d) In the case of DEPUTY COMMISSIONER, H.R. & C.E. BOARD v. SIDHDHIVINAYAGA MUDALIAR (1971) (1) M.L.J. 422,, a Division Bench of this Court has held that a prescriptive title as hereditary trustees of the temple can be acquired. (e) The decision in KRISHNA CHETTIAR v. RAMAN CHETTIAR (1962 (I) M.L.J. 385 is with respect to the power of area committee under Section 44 of the Act. (f) In the case, COMMISSIONER, H.R.& E. v. L.T. SWAMIAR (A.I.R. 1954 S.C. 282), seven Judges Bench of Supreme Court has held that, "...under Article 26(d), it is the fundamental right of a religious denomination or its representative to administer its properties in accordance with law; and the law, therefore, must leave the right of administration to the religious denomination itself subject to such restrictions and regulations as it might choose to impose. A law which takes away the right of administration from the hands of a religious denomination altogether and vests it in any other authority would amount to a violation of the right guaranteed under cl.(d) of Article 26 . "

From the above decisions, it is clear that, the right conferred under Article 26 is available to every religious denomination or any section thereof to establish and maintain institution for religious and charitable purpose and to maintain its own affairs in matters of religion. 11. The phrase, "establish and maintain" cannot be separated. It shall be read conjunctively. Only when a religious denomination or a section thereof establishes a

religious institution, it gets the right to manage its own affairs in matters of religion with respect to that institution. This principle has been laid down by the Supreme Court in the case of AZEEZ BASHA v. Union of India (A.I.R. 1968, Supreme Court, 662). Therefore, the prayer of the plaintiff that the temple is a denominational temple, can be decreed only if the plaintiff proves that they established the religious institution and that they are a part of a religious denomination and that they are administering the same continuously.

12. The plaintiff has filed and relied upon the judgment in Ex.A.3 which shows that a scheme has been framed by a decree in O.S.28 of 191 4, as early as 1917 itself; The relevant provisions of the scheme are as follows: " It is decreed that the scheme drafted and put into Court by the parties and approved by the Court with the modifications above set forth with reference to Clauses 25 and 26 of the draft scheme be adopted for the convenient management of the plaint Mariamman temple and the Kubeswaraswami temple in the village of Kurunjipadikuppam, Cuddalore Taluk, "TERMS OF THE DRAFT SCHEME (1) The suit temple, i.e., the Mariammal temple and the Kumbeswaraswami temple, be declared to be a public religious trust, i.e., all members of the public are entitled to worship therein; but the trusteeship for the control and management of the said temple and all their properties movable and immovable now in existence or that may be acquired in future shall vest solely in the Sengundar community of Pazhantheru of Kurunjipadi.

(19) On the occurrence of a vacancy in the Board caused by death, removal, resignation, or otherwise, the community shall, at a general meeting, fill up the vacancy by election. If any vacancy remains unfilled for over 3 months, the eldest members of the households entitled to vote for the purpose, may after giving a fortnight's notice to the members of the Board, fill up the vacancy by election. If any seat on the Board remains vacant for more than 6 months, this Court may on its own motion or on the application of any ten interested in the trust fill up the vacancy by appointing a member from among the members of the Pazhantheru Sengundars.
..... (23) The Board may from time to time frame new rules or modify the existing rules in regard to the management of the suit temples subject to the approval of the Sengundar community of Pazhantheru and of this Court. The Court also may of its own motion or on the application of any one interested in the trust frame rules for the purpose of management of the suit temples, without prejudice to the rights of the Panzhantheru Chengundar community and not inconsistent with the general principles of this scheme. "

From this, it is clear that the Court as early as 1917 has declared that the suit temple is a "public temple." It is also clarified that "all the public has the right to worship in the temple." Where the public has a "right" "to worship" in a temple without any restriction whatsoever, that temple cannot be a denominational temple as held by the Supreme court in SHIRUR MUTT case. Therefore, the decree of declaration by the trial Court that it is a denominational temple does not appear to be correct. 13. It is true that no appeal has been filed by the department against that declaration. Normally this Court will not interfere in such finding, when no appeal was preferred.

But, inasmuch as, earlier, a decree has been passed by a competent Court and in that decree, the suit temple has been declared as a "public temple" that cannot be ignored by this Court, where another decree contrary to the earlier decree is passed. In the 1917 decree, the Court has held that all members of the public are entitled to worship in the suit temple. The only difference between the denominational temple and nondenominational temple is that in the non-denominational temple, the entire public shall have the right to worship without any restriction, whereas in the denominational temple, during some of the functions and poojas, the participation can be restricted only to the members of that denomination. Therefore, when all members of the public have right to worship in the temple without any restriction, then such a temple cannot be held to be the denominational temple. 14. A scheme decree can be modified by the Court. There is also a provision in the 1917 decree to the effect that alterations of the scheme can be done only with the approval of the Court. In this case, instead of seeking for modification of the scheme, a fresh suit has been filed. Under such circumstances, a decree cannot be granted by the civil Court contrary to the scheme already framed by the Court. A decree passed in a suit under Section 92 C.P.C. is binding not only on the Trust and the Trustees, but also on all the worshippers of the temples. When a suit is filed in a representative capacity, all the persons who have the same interest are represented in the suit and therefore, when a decree is passed in such a suit, it acts as res judicata and prevents the parties from re-agitating the matter again. This principle has been laid down by the Privy Council and was followed by this Court as well as the Supreme Court. The Supreme Court in the case RAJE ANANDRAO v. SHAMRAO AND OTHERS (A.I.R. 1961, S.C. 1206) observed as follows: " A suit under Section 92 is a representative suit and the decision therein binds not only the parties thereto, but all those who are interested in the trust."

Further, the Supreme Court reiterated the same principle in AHMAD ADAM v. M.E. MAKHRI (A.I.R. 1964, S.C. 107), wherein it is held as follows: " Where a representative suit is brought under Section 92 and a decree is passed in such a suit, law assumes that all persons who have the same interest as the plaintiffs in the representative suit were represented by the said plaintiffs and, therefore, are constructively barred by res judicata from reagitating the matters directly and substantially in issue in the said suit. A similar result follows if a suit is either brought or defended under Order 1, Rule 8. In that case, persons either suing or defending an action are doing so in a representative character, and so, the decree passed in such a suit binds all those whose interests were represented either by the plaintiffs or by the defendants. " 15. Therefore, the present suit is barred by res judicata. Hence, the finding that the suit temple is denominational temple, contrary to the decree in 1917 is not legal and valid and it is liable to be set aside. Further, in the case on hand, in the suit O.S.28 of 1914, it has been declared that the the temple belongs to Senguntha community people of Pazhantheru (Old Street) of Kurinjipadi. The declaratory decree is a judgment in rem; that is binding on all people whether parties to the suit or not. Therefore, the prayer in the present suit that the temple belong to the people of the "three streets" is barred as it is also contrary to the decree. Therefore, the declaration granted by the trial Court that the temple belongs to Senguntha Mudaliars of the three streets, viz., Eswaran Koil Street, Vachani Mudali

Street and Ellaikal Street in Kurinjipadi and approved by the first Appellate Court, is contrary to the earlier decree. The issue of ownership of the temple cannot be re-opened as the earlier decree acts as res judicata against the plaintiffs who are the descendants of the parties to the earlier suit. Therefore, the finding of the trial Court that it belongs to Senguntha Mudaliar of the three streets is not legal and valid. Hence that finding of the trial Court as confirmed by the first Appellate Court is also not legally sustainable. 16. This Court though hears the second appeal filed by the appellant and the H.R. & C.E. Department has not preferred any appeal, yet this Court can exercise the revisional powers of Court, under Article 22 7 of the Constitution of India. When the trial Court has granted a decree which is prima facie illegal though such a finding is not challenged by any party, still the High Court can and shall when it is brought to its knowledge, exercise the power under Article 227 of the Constitution read with Section 115 of the Code of Civil Procedure. This power can also be exercised suo motu by the High Court. Therefore, by exercising the power conferred upon this Court, under Section 115 C.P.C. and Article 227 of the Constitution, the findings of the trial Court, (1) that the suit temple belongs to the people of Senguntha Mudaliar community of the three streets, viz., Eswaran Koil Street, Vachani Mudali Street and Ellaikal Street in Kurinjipadi; and (2) that the suit temple is a denominational temple; as confirmed by the first Appellate court are set aside. 17. At the same time, as found already, office of Trustee of a temple can be acquired by prescription. From the evidence available in this case, it is seen that Senguntha Mudaliar community of the three streets have acquired right to be appointed as the Trustee by prescription. Therefore, that right cannot be altered, that is s Trustees can be appointed by H.R. & C.E. only from among the Senguntha Mudaliar community of the three streets. It cannot appoint any other person other than a person from the Senguntha Mudaliar community of the three seats. 18. The fourth prayer in the suit is, that the H.R.& C.E. Board shall be restrained from interfering with the management of the temple by the first appellant, viz., P.K.Annamalai. That is, the prayer in this suit is to injunct the H.R. & C.E. Board from in any way interfering with the management by the first plaintiff of the properties of the temple. 19. Appointment of trustee is a power conferred under H.R.& C.E. Act. Admittedly, the first plaintiff was appointed as the nonhereditary trustee by the H.R. & C.E. Board. Such a non-hereditary trustee cannot claim that he shall continue to be a trustee for ever. This prayer seeks for a blanket injunction not to interfere with the management by the first plaintiff of the temple's property for all times to come. Such a prayer cannot be granted by any Court. As long as the trustees are appointed from and out of the Senguntha Mudaliar community of the three streets referred above, there can be no grievance for the plaintiffs. 20. Further, the present suit has been filed in a representative capacity representing people of the community residing in the three streets. A suit in a representative capacity is filed representing all the people of that community; Therefore, the relief prayed for can only be for the benefit of the community, as a whole; therefore, a relief in favour of one single individual of that community cannot be prayed for. Inasmuch as this is a suit filed in representative capacity in the interests of the entire community of Senguntha Mudaliars of the three streets, the fourth prayer, which is not for the benefit of the entire community, but only for one individual cannot be prayed

for; Such a prayer cannot be sought for in the representative suit. Therefore, that prayer cannot be granted by the Courts. Both the trial Court and the first Appellate Court have rightly negatived that prayer. There is no reason to interfere with that finding. Hence, that finding is confirmed. 21. For the reasons stated above, the decree passed by the Courts below are modified, as follows:

(1) The declaration that the suit temple is a denominational temple is set aside. (2) The decree that the suit temple belong to people of Senguntha Mudaliar of three streets is set aside. (3) The decree passed in O.S.28 of 1914 that the temple belong to people of Senguntha Mudaliar community of Pazhantheru (Old Street) is confirmed. (4) The H.R.& C.E. can appoint only the people of Senguntha Mudaliar community of the three streets as trustees of the temple is confirmed. 22. In the result, the second appeal is disposed of accordingly. No costs. The substantial question of law is answered against the appellant.

Index: yes
Web Site: Yes

vs

To:
1. The Commissioner, H.R. & C.E. Department,
Nungambakkam High Road,Madras.

2. The Deputy Commissioner, H.R. & C.E. Department,
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3. The Assistant Commissioner, H.R. & C.E. Department,
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